

Appl. No. 10/633,048  
Amendment dated: May 31, 2006  
Reply to OA of: February 22, 2006

### **REMARKS**

This is in response to the Official Action of February 22, 2006. Applicants have amended the claims to incorporate subject matter indicated as allowable in the outstanding Official Action into a base independent claim. Therefore, while the present Amendment is submitted after a Final Rejection has been issued, Applicants respectfully submit that the Amendment requires no further search and consideration and should be entered and considered.

Applicants acknowledge with appreciation the indication in the Official Action that claim 16 would be allowable if rewritten in independent format including all of the limitations of the base claim and any intervening claims. Accordingly, Applicants have amended claim 16 such that claim 16 is now written in independent format including all the limitations of the base claim and any intervening claims. Claims 1-8, 10, 11, 13-15 and 19-36 have been canceled. Claims 9, 12, 17 and 18 have been amended to properly depend from claim 16.

Further, with respect to the rejection of claim 9 under 35 U.S.C. §112, second paragraph as being indefinite as set forth in the outstanding Official Action, Applicants respectfully submit that claim 9 has been amended to address this issue. The Official Action urges that the recitation of "N'-neu gene" in claim 9 is vague because N'-neu sequence is only a portion of the neu gene. Accordingly, Applicants have amended claim 9 to recite "the N'-neu portion of said fusion gene comprises a truncated segment of neu gene encoding extracellular domain of neu protein". In light of this amendment, Applicants respectfully submit that claim 9 and all other claims currently pending in the instant application are in full compliance with the requirements of 35 U.S.C. §112 and are clearly allowable over the references of record.

With respect to the rejection of claims 1-3, 5, 8, 10, 12, 13 and 18 under 35 U.S.C. §102(b) as being anticipated by Pasquini, the rejection of claims 1-3, 5, 8, 10-12 and 14 under 35 U.S.C. §102(b) as being anticipated by Glorioso, the rejection of claims 1-5, 8, 12, 14, 15, 17 and 18 under 35 U.S.C. §102(e) as being anticipated by Cotten and claims 6, 7 and 9 under 35 U.S.C. §103(a) as being unpatentable over Glorioso or

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Cotten in view of Hand-Zimmermann, Applicants respectfully submit that in light of the amendments to the claims, all of the rejections over the prior art are obviated and rendered moot. Accordingly, it is respectfully requested that these rejections be withdrawn.

With respect to the rejection of claim 11 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement, Applicants respectfully submit that because claim 11 has been canceled, this rejection is obviated and rendered moot. Accordingly, Applicants respectfully request that this rejection be withdrawn.

With respect to the rejection of claim 2, 3 and 9 under 35 U.S.C. §112, second paragraph as being indefinite, Applicants respectfully submit that in view of the amendments, including the cancellation of claims 2 and 3 and the amendment to claim 9 as discussed above, this rejection is obviated and rendered moot. Accordingly, Applicants respectfully request that this rejection be withdrawn.

In view of the above comments and further amendments to the claims, favorable reconsideration and allowance of all of the claims now present in the application are most respectfully requested.

Respectfully submitted,  
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